

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JERRY R. ARMAGOST,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

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UNITED STATES OF AMERICA,

Counterclaim Plaintiff,

v.

JERRY R. ARMAGOST and ROBERT  
RAYMOND,

Counterclaim Defendants.

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ROBERT RAYMOND,

Counterclaim Plaintiff,

v.

UNITED STATES OF AMERICA,

Counterclaim Defendant.

4:07CV3240

FINDINGS AND  
RECOMMENDATION

On January 28, 2010 counterclaim defendant and counterclaim plaintiff Robert Raymond's counsel of record, Mark C. Laughlin and Daniel J. Wintz of Fraser Stryker PC LLO, filed motions to withdraw as counsel for Mr. Raymond. Filing nos. [69](#) and [70](#). The motions to withdraw stated Mr. Raymond directed Fraser Stryker to withdraw from representation and that Mr. Raymond did not intend to hire any other counsel to represent him in this case. While conferring with Mr. Raymond and his counsel, Mr. Raymond advised the court that he would not be seeking new counsel, did not want the trial or pretrial conference continued, and did not currently intend to further litigate his claims and defenses in this case or attend the trial. The motions to withdraw were granted, filing no. [73](#), and following the withdrawal of Fraser Stryker as Raymond's counsel, no other attorney entered an appearance in this matter on behalf of Mr. Raymond.

The pretrial conference in this matter was scheduled for February 25, 2010 at 1:00 p.m. By memorandum and order of February 12, 2010, the parties were reminded that the pretrial conference in this case was set to be held before the magistrate judge at the appointed date and time. Filing No. [79](#). The memorandum and order, a copy of which was mailed to Mr. Raymond, provided that a party's failure to attend the pretrial conference would result in dismissal of all the claims of the non-attending party and an entry of default as to all claims filed against the non-attending party. The time of the pretrial conference was subsequently rescheduled for 10:00 a.m. on February 25, 2010.

The pretrial conference was held on February 25, 2010 at 10:00 a.m. Mr. Raymond did not attend the pretrial conference, nor did he present himself at the magistrate judge's chambers at or around 1:00 p.m. on February 25, 2010, the original scheduled time for the pretrial conference.

During the course of the pretrial conference, attorney for the United States of America, Nathan E. Clukey, informed the magistrate judge that he had spoken to Mr. Raymond prior to the pretrial conference. Mr. Clukey stated under oath and on the record that he asked Mr. Raymond if Mr. Raymond had received a draft of the order on final pretrial conference Mr. Clukey had previously mailed Mr. Raymond. Mr. Raymond indicated that he had not received a copy of the draft order. Mr. Clukey stated that he instructed Mr. Raymond to check his mail for the draft order. Mr. Raymond indicated he was not interested in reviewing the document, and further informed Mr. Clukey that Mr. Raymond did not intend to participate at trial. Mr. Clukey also stated on the record that Mr. Raymond indicated he did not want to defend the claims brought against him or pursue the counterclaims he has filed in this case.

IT THEREFORE HEREBY IS RECOMMENDED to the Honorable Richard G. Kopf, United States District Judge, pursuant to [28 U.S.C. § 636\(b\)](#), that Robert Raymond's claims against any other party herein, and his defenses to claims filed against him by any other party, be dismissed for want of prosecution. It is further recommended that a default be entered against Robert Raymond as to all claims filed against him.

The parties are notified that failure to object to the recommendation herein by March 3, 2010 may be deemed a waiver of the right to appeal the district judge's adoption of the recommendation.

IT IS FURTHER ORDERED that the clerk shall mail a copy of this order to Robert Raymond.

DATED this 25<sup>th</sup> day of February, 2010.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge